Neosho Construction Company, Inc. ***and*** **Iron Workers Local Union No. 10, affiliated with International Association of Bridge, Structural & Ornamental Iron Workers, AFL–CIO.** Case 17–CA–15012

September 30, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

On May 24, 1991, Administrative Law Judge William L. Schmidt issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Neosho Construction Company, Inc., Council Grove, Kansas, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[1] In affirming the judge, we additionally rely on *Cedar Valley Corp*., 302 NLRB 823 (1991). In *Cedar Valley* the Board adopted the judge's decision that the employer was bound to an 8(f) contract by virtue of automatic renewal clauses to which it had agreed with various unions, despite the fact that the employer had not complied with the subsequent agreements for a significant number of years.

Naomi L. Stuart, Esq., for the General Counsel.
Richard D. Anderson and *Michael Strong Esqs*. (Entz Anderson & Chanay), of Topeka, Kansas, for the Respondent.

DECISION

STATEMENT OF THE CASE

WILLIAM L. SCHMIDT, Administrative Law Judge. Iron Workers Local Union No. 10, affiliated with International Association of Bridge, Structural & Ornamental Iron Workers, AFL–CIO (Union) filed an unfair labor practice charge against Neosho Construction Company, Inc. (Respondent or Company) on May 17,1990.[1]

On August 1, the Regional Director for Region 17 of the National Labor Relations Board (NLRB or Board) issued a complaint based on the Union's charge. The complaint alleges Respondent engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the National Labor Relations Act (Act) by failing to abide by the terms of its collective-bargaining agreement with the Union—concededly an agreement entered into pursuant to Section 8(f) of the Act—and by withdrawing union recognition. A hearing before an administrative law judge (judge) was incorporated in the complaint.

Respondent answered the complaint on September 25 by denying that it engaged in the unfair labor practices alleged.

I heard this matter on October 30 at Mission, Kansas. After carefully considering the record, the demeanor of the witnesses, and the posthearing briefs filed by General Counsel and Respondent, I find Respondent engaged in the unfair labor practices alleged based on the following

FINDINGS OF FACT

I. ALLEGED UNFAIR LABOR PRACTICES

A. *The Facts*

Respondent, a corporation with an office and place of business in Council Grove, Kansas, is engaged in the construction industry as a contractor.[2] Over the period involved here, Respondent performed projects in several midwestern and western states. Ordinarily, its projects involve the building of bridges, roads, and railroads.

Respondent employs a stable complement of core employees who move from project to project.[3] Although Respondent usually operates without any union agreement, occasionally a project owner insists the Respondent perform pursuant to local labor agreements. When this requirement is imposed, Respondent typically enters into a union project agreement but, upon completion of such projects, Respondent considers those agreements concluded.

The Union, headquartered in Kansas City, Missouri, represents ironworkers employed in the construction industry. The Union's geographic jurisdiction covers western Missouri and eastern Kansas. It has never been certified by the Board to represent Respondent's employees nor has it otherwise established its majority standing by means of an authorization card check.

However, on December 18, 1975, Gordon Ensley, then Respondent's job super intendent on a project at the St. Joseph Powerhouse in St. Joseph, Missouri, executed a contract stipulation with the Union following a visit to that jobsite by Union Agent Robert Jacobs.[4] By that stipulation, Respondent agreed to be bound by the terms of a labor agreement then in existence between the Union and the Builders' Association of Kansas City (master agreement) and all future master agreements for the duration of the stipulation.[5] The stipula-

[1] All dates are in 1990, unless otherwise indicated.

[2] In the 12-month period ending June 30, Respondent's direct inflow exceeded the amount established by the Board for exercising its statutory jurisdiction. Accordingly, I find that it would effectuate the purposes of the Act for the Board to resolve this labor dispute.

[3] These employees are primarily laborers and equipment operators experienced in working with specialized equipment used on railroad building projects.

[4] This finding is based on Ensley's more reliable recollection. Jacobs recalled that the agreement followed a visit to Respondent's nearby Iatan Powerhouse project. However, Ensley claims that he was never at the Iatan project and Ron Montieth, Respondent's project engineer at both projects, recalled that no ironwork was performed at the Iatan project.

[5] The current master agreement in evidence is effective by its terms from May 1 until March 31, 1993. A succession of continuous

tion was effective by its terms for a 3-year period from the date of its execution and for successive 3-year periods thereafter unless Respondent provided a written termination notice within the 30-day period running from 60 to 30 days prior to the anniversary date of the agreement. No effective termination notice was ever given by Respondent.

The St. Joseph Powerhouse project lasted until June 1976. While it was in progress, Respondent employed a few ironworkers and otherwise conformed to the terms of the master agreement at that job.

After the St. Joseph Powerhouse project, Respondent never again applied the terms of the master agreement or any successor agreements while working in the geographic coverage of the master agreement which extends over all of 44 western Missouri counties and portions of 5 others plus all of 24 eastern Kansas counties and portions of 2 others.[6]

During the next 14 years, Respondent performed as the prime contractor or as a subcontractor on 20 additional jobs in the contract area. Six jobs in- volved contracts under $100,000; five jobs involved contracts ranging from $105,000 to $309,000; four jobs involved contracts ranging from $736,000 to $957,000; and three jobs involved contracts ranging from $2 million to $2328 million. Contract amounts for the two remaining jobs—both at Iatan—are not disclosed.

Respondent adduced evidence from former project engineer Montieth that some work involving the ironworker's craft was performed on a couple of jobs in the more rural areas of the master agreement coverage in the late seventies or early eighties. Montieth recalled specifically that no such work was performed at Iatan and that Respondent probably performed a day or less of such work while engaged as a contractor at the General Motors Fairfax facility in the Kansas City metropolitan area.[7]

In April, Jim Fuller, the Union's assistant business agent, observed Respondent's employees performing iron work at a Santa Fe Railroad project in Wyandotte County, Kansas.[8] Fuller approached the job superintendent to request that he use Union ironworkers on the job. The job superintendent essentially rejected his request saying that the Company was ''non-union.''

When Fuller returned to the Union's office, he discovered the 1975 contract stipulation in the Union's files. Having concluded following a further search of the Union's files that the stipulation had never been terminated, Fuller telephoned Robert Becker, Respondent's vice president of administration, to request that the current master agreement be applied at the Santa Fe Railroad project. Becker told Fuller that he was unaware of the stipulation and asked that a copy be sent to him. Fuller did so promptly.

On May 4, Becker wrote to Fuller explaining that Respondent ''has never assigned bargaining rights to the Builders Association of Kansas City'' and that any agreement with the Union ''was clearly an individual 8(f) agreement which has long since expired.'' The letter continues, ''[u]nder *Deklewa* our company has no obligation to bargain or elect to enter into a new collective bargaining agreement'' and concludes, ''[w]e would advise you that our company does not wish to enter into an 8(f) agreement with your union.''

After receiving Becker's letter, Fuller telephoned Becker and insisted that the Respondent was bound by the 1975 stipulation. Nevertheless, Respondent denied that it is bound by the stipulation and has refused to apply the terms of the current master agreement.

B. *Further Findings and Conclusions*

Respondent is ''an employer engaged primarily in the building and construc tion industry'' within the meaning of Section 8(f) of the Act. The General Counsel made no attempt to prove that the bargaining relationship which arose by virtue of the 1975 stipulation met the criteria required for a 9(a) relationship. Hence, under the principles established in *John Deklewa & Sons*, 282 NLRB 1375 (1987), enfd. sub nom. *Iron Workers Local 3 v. NLRB*, 843 F.2d 770 (3d Cir. 1988), it is presumed that the relationship was established pursuant to 8(f).[9] Under *Deklewa*, an employer may only repudiate an 8(f) relationship on the expiration of the existing collective-bargaining agreement.

As neither party timely terminated the 1975 stipulation in writing, the General Counsel argues that its automatic renewal provision has served to effectively bind Respondent to successive master agreements. In support of this proposition, the General Counsel relies on *Fortney & Weygandt, Inc*., 298 NLRB 863 (1990); *C.E.K. Industrial Mechanical Contractors*, 295 NLRB 635 (1989); and *William N. Taylor, Inc*., 288 NLRB 1089 (1988). By failing to apply the master agreement at the Santa Fe project in 1990 and by repudiating its 8(f) relationship with the Union on May 4, both during the term of the effective and binding 1975 stipulation, the General Counsel believes Respondent violated Section 8(a)(5) based on *Deklewa* principles.

Respondent contends that *Deklewa* and the case trilogy cited by the General Counsel do not conclusively resolve the situation found here. Respondent argues that the General Counsel is using *Deklewa* and its progeny to breath new life into a long dead bargaining relationship. Essentially Respondent argues that its 8(f) relationship with the Union was repudiated by conduct long prior to the Board's *Deklewa* de-

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master agreements have been executed between the agreement in effect in 1975 and the present. Although the Association party in the current agreement refers to the Builders Association of Missouri and the 1975 stipulation refers to the Builders Association of Kansas City, no one questions the fact that the current master agreement (G.C. Exh. 4) is the pertinent underlying agreement in this dispute. The reference in the complaint to the Builders Association of Kansas is a typographical error.

[6] Respondent is headquartered in Morris County, Kansas, which is not within the contractual jurisdiction.

[7] The General Motors project is one of the $2 million projects reflected in a compilation Respondent prepared for the hearing. Far and away the greatest portion of Respondent's work there involved the building of a railroad spur as a contractor for the Union Pacific Railroad.

[8] Specifically, Fuller observed the construction of a long concrete re taining wall reinforced with iron bars. The construction of the iron reinforcement is work typically performed by the Union's members. Later, he observed the construction of a concrete slab also reinforced by iron bars and mesh.

[9] Sec. 8(f), added to the Act in 1959, was a direct response to prior Board decisions holding the enforcement of union-security clauses in prehire agreements unlawful because the signatory labor organization was not a Sec. 9(a) representative as required under the proviso to Sec. 8(a)(3) exempting union-security arrangements as a discriminatory practice. See, e.g., *Guy F. Atkinson*, 90 NLRB 143 (1950).

cision and that *Deklewa* should not be applied retroactively to revive the relationship.

I am satisfied from the cases cited by the General Counsel that the Board has signaled its intention to give full effect to contractual automatic renewal provisions in applying the *Deklewa* principles. Contrary to Respondent's argument, the Board's language in both *Fortney & Weygandt* (at fn. 8) and *C.E.K.* (at fn. 4) that nothing in its *Deklewa* decision ''precludes a finding that an 8(f) agreement may, in appropriate circumstances, automatically renew,'' does not suggest any disposition on the Board's part to look behind the mutual obligations of the contractual renewal language for parole evidence in support of some reason to forestall renewal. The ''in appropriate circumstances'' language emphasized by Respondent merely means, in my judgment, that 8(f) agreements with automatic renewal provisions will be honored in applying the *Deklewa* principle at issue here unless renewal is effectively forestalled as specified in the agreement. This conclusion is clearly suggested by the *Taylor* case where the Board left the question of renewal to the compliance stage because its decision issued after the contractual expiration date.

But even assuming a willingness by the Board to look behind the automatic renewal language for inconsistent conduct, I remain unconvinced that this is a case where Respondent has previously provided the Union with adequate notice of repudiation.

Commencing with its companion decisions in *R. J. Smith Construction Co*., 191 NLRB 693 (1971), and *Ruttmann Construction Co*., 191 NLRB 701 (1971), the Board construed Section 8(f) agreements as a preliminary step to a full collective-bargaining relationship under Section 9(a) of the Act. From this initial stage until the signatory labor organization achieved majority support among the unit employees, the employer was free at anytime to repudiate the 8(f) relationship and any collective-bargaining agreement arising therefrom without violating its duty to bargain under Section 8(a)(5) and (d).

Based on this view of 8(f) agreements, no contractual enforcement mechanism existed before the Board in the absence of a 9(a) relationship in the period between *R. J. Smith* and *Deklewa*.[10] However, the Federal courts, in Section 301 actions, did enforce 8(f) agreements without regard to conversion but recognized an employer's ''undoubted'' right to repudiate an 8(f) agreement on the ground that such agreements were voluntary and voidable until the labor organization acquired majority support among employees. *Jim McNeff, Inc. v. Todd*, 461 U.S. 260 (1983). The *McNeff* Court specifically refrained from deciding what specific acts would constitute repudiation of a prehire agreement but suggested that ''engaging in activity overtly and completely inconsistent with contractual obligations'' as one possible method. Id. at 270 fn. 11.

Acknowledging implicitly that it gave no written termination notice to the Union and that no petition had ever been filed with the Board pursuant to the final proviso of Section 8(f)—other repudiation methods alluded to by the *McNeff* Court—Respondent essentially claims its conduct following the Powerhouse project in 1976 was tantamount to repudiation of its agreement with the Union.

However, the repudiation by conduct doctrine under Section 301 cases—which, according to the Respondent, developed after its repudiation here—typically required something more than mere breach of the 8(f) contract. *Contractors Health & Welfare Plan v. Harkins Construction & Equipment Co*., 733 F.2d 1321 (8th Cir. 1984). In *Washington Area Carpenters' Welfare Fund v. Overhead Door Co*., 681 F.2d 1 (D.C. Cir. 1982) the Court said that it was essential ''that the union and employees be put on notice that the contract is voided.'' See also *New Mexico Dist. Council v. Mayhew Co*., 664 F.2d 215 (10th Cir. 1981), in which that Court enforced an 8(f) agreement in circumstances involving equities similar to those found here, rejecting in the process the employer's repudiation by conduct claim.

Nevertheless, when the Ninth Circuit initially considered the McNeff case, it stated that ''in some circumstances noncompliance can be so bald as to put the union on notice of the employer's intent to repudiate.''[11] *Todd v. Jim McNeff, Inc*., 667 F.2d 800 (9th Cir. 1982). In a later case, the Ninth Circuit affirmed a district court's finding of repudiation by conduct were the union was well aware of the contractual noncompliance in part because, as one witness put it, ''you could spit over [to the jobsite]'' from the union's office building and the frequent discussions of the employer's noncompliance at union meetings. *Carpenters v. Endicott Enterprises, Inc*., 806 F.2d 918 (9th Cir. 1986).

Typically, Respondent merely treated all 8(f) agreements as limited to the projects involved regardless of the language used. Although Respondent elicited parole evidence from Ensley that he intended the agreement to be a ''project only'' agreement, Union Agent Jacobs disputes this assertion and the 1975 stipulation language is in no way limited to a single project. Under the repudiation by conduct doctrine applied by several courts, Respondent's practice of ignoring 8(f) agreements at the conclusion of its individual projects is of no significance where, as here, it failed to communicate that fact to the signatory labor organization.

As outlined above, Respondent claims to have worked on several additional projects within the contractual jurisdiction over the years without applying the relevant master agreement and without objection from the Union; indeed, Respondent claims that the Union failed to communicate in any fashion with it until the Santa Fe project some 14 years after the Powerhouse project was completed. More particularly, Respondent points to its conspicuous presence at the General Motors plant project where approximately 300 ironworkers were employed and which was apparently visited frequently by union agents.

On the other hand, Union Agent Jacobs, who held office during all but 3 of the 14-year period involved, denied that

[10] Technically speaking, the Board has no charter under the Act to enforce collective-bargaining agreements. However, the Board has long held that the repudiation of all or significant portions of a collective-bargaining agreement violates the 8(a)(5) duty to bargain and typically requires offending employers to give effect to the repudiated agreement as a remedy in such cases. See, e.g., *Oak Cliff-Golman Baking Co*., 207 NLRB 1063 (1973).

[11] By way of example, the court cited the Board's decision in *Iron Workers Local 103 (Higdon Contracting)*, 216 NLRB 45 (1975), where the Board found lawful repudiation under its *R. J. Smith* and *Ruttmann* decisions based on the employer's statement that it ''would be kind of silly'' to apply the union contract to the nonunion side of a double-breasted operation designed specifically to evade the union agreement.

he ever became aware that Respondent performed any work falling under the Union's craft jurisdiction and, hence, the master agreement until Assistant Business Agent Fuller discovered Respondent engaged in building the retaining wall at the Santa Fe project. Jacobs tacitly conceded that Respondent was occasionally observed in his geographic jurisdiction; he said that Respondent probably did 90 percent of the railroad track work in the area. However, the Union has never claimed that work as falling within its craft jurisdiction and has never attempted to apply the relevant master agreement to such work. As for the large number of ironworkers employed at the General Motors project, those individuals were employed by another contractor and the evidence suggests that the amount of work performed by Respondent on this job as well as several other jobs in the area arguably within the Union's craft jurisdiction was minimal or was performed in more remote areas.

In sum, on the basis of the evidence here, it appears highly questionable whether Respondent's prior conduct or noncompliance was sufficiently ''bald'' to put the Union on notice of its intent to repudiate the 1975 stipulation even under the repudiation by conduct doctrine developed by the courts.

Respondent also argues, in effect, that *Deklewa* should not be applied retroactively to the circumstances found here. Even assuming that this case would represent a true retroactive application of *Deklewa*, the Board, with court approval, has announced that it will retroactively apply the principles announced there and I am not at liberty to do otherwise. See *Lenz Co.*, 153 NLRB 1399, 1401 (1965).

Accordingly, I find Respondent violated Section 8(a)(1) and (5) of the Act as alleged in the complaint.

II. THE EFFECT OF THE UNFAIR LABOR PRACTICES ON COMMERCE

The activities of the Respondent set forth above, occurring in connection with Respondent's business operations, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and is an employer engaged primarily in the building and construction industry within the meaning of Section 8(f) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By refusing the Union's request in April to apply the existing master agreement to its Santa Fe project in Wyandotte County, Kansas, and by repudiating its collective-bargaining relationship with the Union on or about May 4, Respondent engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act.

4. The unfair labor practices specified above affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that Respondent has engaged in certain unfair labor practices, the recommended order requires Respondent to cease and desist therefrom and to take the following affirmative action designed to effectuate the policies of the Act.

Respondent will be ordered to make whole its employees, as prescribed in *Ogle Protection Service*, 183 NLRB 682 (1970), for any losses they may have suffered as a result of Respondent's failure to apply the current collective-bargaining agreement to which it is bound by virtue of its contract stipulation with the Union, commencing with the 10(b) period, including contributions and payments the Union and the contractual trust funds would have received, with interest computed in the manner prescribed by *New Horizons for the Retarded*, 283 NLRB 1173 (1987); and *Merryweather Optical Co.*, 240 NLRB 1213 (1979). Finally, Respondent will be required to post the notice to employees attached as the appendix at any jobsite currently in progress within the geographical jurisdiction of the applicable agreement and at its place of business in Council Grove, Kansas.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[12]

ORDER

The Respondent, Neosho Construction Company, Inc., Council Grove, Kansas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to apply the terms and conditions of the current collective bargaining agreement to which it is bound by virtue of its automatically renewed contract stipulation with Iron Workers Local Union No. 10, affiliated with International Association of Bridge, Structural & Ornamental Iron Workers, AFL–CIO (Union) and refusing to recognize the Union as the employee representative in the following appropriate unit:

> All employees performing construction work within the established craft jurisdiction of the International Association of Bridge, Structural and Ornamental Iron Workers in the following counties of Missouri: Andrew, Atchinson, Barton, Bates, Benton, Buchanan, Caldwell, Carrol, Cass, Cedar, Chariton, Christian, Clay, Clinton, Cooper, Dade, Dallas, Daviess, Dekalb, Gentry, Greene, Grundy, Harrison, Henry, Hickory, Holt, Howard, Jackson, Johnson, LaFayette, Linn, Livingston, Mercer, Moniteau, Morgan, Nodaway, Ozark, Pettis, Platte, Polk, Randolph, Ray, St. Clair, Saline, Sullivan, Taney, Vernon, Webster, Worth, Wright and portions of Boone, Camden, Douglas, Laclede and Miller; and the following counties in Kansas: Allen, Anderson, Atchinson, Bourbon, Brown, Coffey, Doniphan, Douglas, Franklin, Jackson, Jefferson, Johnson, Leavenworth, Linn, Lyon, Marshall, Miami, Nemaha, Osage, Pottawatomie, Riley, Shawnee, Wabaunsee, Wyandotte, and portions of Neosho and Crawford counties, EXCLUDING all office clerical employees, professional employees, guards, and supervisors as defined in the Act, and all other employees.

[12] If no exceptions are filed as provided by Sec. l02.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. l02.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make whole employees for any losses suffered as a result of Respondent's failure to honor the collective-bargaining agreement to which it is bound by virtue of its automatically renewed contract stipulation with the Union in the manner specified in the remedy section of this decision.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay and other payments due under the terms of this Order.

(c) Post at its current jobsites within the geographical area encompassed by the appropriate unit herein and at its place of business in Council Grove, Kansas, copies of the attached notice marked ''Appendix.''[13] Copies of the notice, on forms provided by the Regional Director for Region 17 after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[13] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail to apply the terms of the current collective bargaining agreement to which we are bound by virtue of our automatically renewed contract stipulation with Iron Workers Local Union No. 10 (Union) or refuse to recognize the Union as the employee representative in the following appropriate unit:

> All of our employees performing construction work within the established craft jurisdiction of the International Association of Bridge, Structural and Ornamental Iron Workers in the following counties of Missouri: Andrew, Atchinson, Barton, Bates, Benton, Buchanan, Caldwell, Carrol, Cass, Cedar, Chariton, Christian, Clay, Clinton, Cooper, Dade, Dallas, Daviess, Dekalb, Gentry, Greene, Grundy, Harrison, Henry, Hickory, Holt, Howard, Jackson, Johnson, LaFayette, Linn, Livingston, Mercer, Moniteau, Morgan, Nodaway, Ozark, Pettis, Platte, Polk, Randolph, Ray, St. Clair, Saline, Sullivan, Taney, Vernon, Webster, Worth, Wright and portions of Boone, Camden, Douglas, Laclede and Miller; and the following counties in Kansas: Allen, Anderson, Atchinson, Bourbon, Brown, Coffey, Doniphan, Douglas, Franklin, Jackson, Jefferson, Johnson, Leavenworth, Linn, Lyon, Marshall, Miami, Nemaha, Osage, Pottawatomie, Riley, Shawnee, Wabaunsee, Wyandotte, and portions of Neosho and Crawford counties, EXCLUDING all office clerical employees, professional employees, guards, and supervisors as defined in the Act, and all other employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of rights guaranteed them by Section 7 of the Act.

WE WILL make our employees whole for our failure to honor our agreement with the Union, including contributions or payments to which the Union and the contractual trust funds are entitled under the agreement, with interest.

NEOSHO CONSTRUCTION COMPANY, INC.